

American Flat Road/Lucerne Access Right-of-Way Amendment

Decision Record

DOI-BLM-NV-C020-2013-0005-EA

August 1, 2016



Introduction

Comstock Mining, LLC has applied to the Bureau of Land Management (BLM), Sierra Front Field Office to amend their existing right-of-way (ROW) grant (NVN 091237) issued on July 6, 2012. The ROW amendment (ROWA) would authorize the construction, maintenance, and use the American Flat and Lucerne Haul roads across public land segments between the Lucerne Pit and heap leach processing facility in American Flat. The Proposed Action would designate the Lucerne Haul Road as “exclusive use” by haul trucks for public safety. The Proposed Action would also authorize the reclamation of an abandon road that leads to the former United Comstock Merger Mill in American Flat. The purpose of the Project is to provide a long-term and safe road network across public land segments that can accommodate haul trucks in order to deliver ore from the Lucerne Pit to a heap leach processing facility, both located on private lands.

The BLM has prepared a Final Environmental Assessment (FEA) in accordance with the National Environmental Policy Act (NEPA) and to assist the Authorized Officer in deciding whether to grant the proposed ROWA (Proposed Action). The FEA evaluated the Proposed Action and two alternatives.

Background

On May 21, 2012, the Bureau of Land Management (BLM), Sierra Front Field Office issued a “Notice to Cease and Desist” letter to Comstock Mining Inc. for alleged use and development of public land without authorization, prevention or obstruction of free passage or transit over or through public lands in violation of Federal Land Management Policy Act of 1976 (United States Code [U.S.C.] 1701 et seq.), the Act of February 25, 1885 (43 U.S.C. 1063), and the regulations at 43 Code of Federal Regulations (CFR) 2808.10 (“What is Trespass?”) and 9239.2-5 (“Settlement and Free Passage of Public Lands Not to be Obstructed”). On June 6, 2012, the BLM issued a “Notice of Trespass” letter to Comstock Mining Inc. and assigned the trespass to BLM case file NVN 091117. These notices involved the modifications and use of the American Flat Road between State Route 342 and the Comstock Mining Inc. heap leach processing facility in American Flat, the Lucerne Haul Road and “bypass road” through “Lot 51¹,” and a segment of public land north of the Lucerne Pit. The Notice of Trespass letter outlined the means to settle the case which included the following:

- Cease the use, development, and restriction of access on and across public lands until Comstock Mining Inc. receives an authorization from the BLM;
- Pay fair market value for the rent for use of public lands, provide rehabilitation and stabilization if lands damaged, and pay the administrative costs incurred by the BLM;

¹ “Lot 51” is a Storey County designation for Assessor Parcel Number 002-131-001 (Gold Hill Townsite, Block 8, Range D, Lot 51). According to a BLM Cadastral survey completed in May 2016, the legal description for Lot 51 is T16N, R21E, Section 5, Lot 24 and Section 6, Lot 13 for approximately 23.76 acres.

- Complete a cultural resources inventory of the affected area;
- Once the trespass is resolved, apply for the authorization to use the public lands;
- Submit to the BLM an application to make modifications to any road features as a part of a “long-term” right-of-way (ROW); and
- To resolve the dispute with regards to “Lot 51,” seek a resolution through the Color-of-Title (COT) Act claim.

On June 25, 2012, Comstock Mining, LLC² submitted to the BLM a SF-299 application (“Application for Transportation and Utility Systems and Facilities on Federal Lands”) for their use of the American Flat Road. On July 2, 2012, the BLM sent correspondence to Comstock Mining, LLC for the processing fee for the requested ROW, and also sent the unsigned ROW grant to Comstock Mining, LLC for their signature.

On July 6, 2012, the BLM notified Comstock Mining Inc. that it had satisfied the conditions to resolve the trespass case, and the case file (NVN 091117) was closed. Also on July 6, 2012, the BLM issued a “interim³” ROW to Comstock Mining, LLC for their use of the American Flat Road through December 31, 2014 (Figure 10 of the Final Environmental Assessment [FEA]). The ROW (NVN 091237⁴), authorized Comstock Mining, LLC to transport ore from their mining operation in the Billie the Kid and Lucerne pits, to their existing heap leach processing facility located in American Flat. The ROW was approved under several conditions including: Comstock Mining, LLC was restricted to use highway-approved vehicles only; and Comstock Mining, LLC was not authorized to conduct any new construction, expansion, restriction of access to the public, or addition to existing berms/creation of new berms along the American Flat Road. A condition of the ROW was that Comstock Mining, LLC would submit a new ROW application in order to make modifications or improvements to the roads subject of NVN 091237.

Comstock Mining, LLC began its use of the American Flat Road under the approved ROW on July 6, 2012. On August 2, 2012, Comstock Mining, LLC commenced surface mining in the Billie the Kid Pit, and hauled ore northbound on State Route 342 with 16.5-ton⁵ haul trucks.

² Comstock Mining, LLC is the wholly-owned subsidiary of Comstock Mining Inc. Since the entity of Comstock Mining Inc. (Inc.) owns all of the entity of Comstock Mining, LLC (LLC), all activity that happens in LLC rolls up to Inc. They are treated as one consolidated company for tax purposes and for Security and Exchange Commission reporting purposes as the consolidated ownership is the same. BLM records also include “Northern Comstock, LLC,” a wholly-owned subsidiary of Comstock Mining Inc.

³ Under Title V of the Federal Land Management Policy Act, a ROW may be authorized for up to 30-years.

⁴ BLM documents and databases continue to use multiple versions of serial numbers for case files. Differences in serial number nomenclature will occur throughout this document, and one use may be slightly different than one found in the case file or on the Master Title Plats.

⁵ All haul truck capacities are based on empty gross vehicle weight.

Haul trucks then traveled southwest on the American Flat Road to an existing heap leach processing facility in American Flat. On February 13, 2013, the BLM allowed a Class 1 COT claim⁶ to proceed for a parcel known as “Lot 51” (NVN 091521). As a result, Comstock Mining, LLC shifted all haul traffic from northbound State Route 342 to the existing Lucerne Haul Road (non-exclusively) through “Lot 51,” then onto the American Flat Road southwest to their heap leach processing facility (Figure 10 of the FEA). Comstock Mining, LLC also changed the type of haul truck from 16.5-ton haul trucks to 38-ton articulated trucks.

Comstock Mining, LLC currently uses the American Flat Road for employee, service, and utility vehicles between State Route 342 and “Lot 51.” Their existing administrative offices are located on the American Flat Road on Comstock Mining, LLC owned land, just west of State Route 342 (Figure 2A of the FEA). Although authorized under their existing ROW, Comstock Mining, LLC does not currently haul mined ore on the portion of the American Flat Road between State Route 342 and “Lot 51.”

On July 11, 2012, and amended on August 3, 2012, Comstock Mining, LLC submitted to the BLM a ROW amendment (ROWA) application and draft plan of development (POD). In the ROWA and as described in the final POD (FPOD), Comstock Mining, LLC requested authorization from the BLM to construct, maintain, and use the existing Lucerne Haul Road across public land segments and to designate it as an exclusive use road for public safety (Proposed Action). The Proposed Action also included proposed modifications to the existing American Flat Road through the separation of haul traffic from public traffic for public safety, and reclamation of an existing road to the former United Comstock Merger Mill in American Flat no longer in use (Figure 2A of the FEA). This ROWA would also provide long-term and comprehensive access across public land segments to mining on private lands.

On June 4, 2014, Comstock Mining, LLC submitted to the BLM a SF-299 application to renew ROW NVN 091237. The original ROW was renewed on October 6, 2014 without changes and was extended until December 31, 2017. The extension of the “interim” ROW issued on July 6, 2012 was determined to be necessary by the BLM due to the lengthy time involved with the compliance of the ROWA under the National Historic Preservation Act (NHPA).

The Project is located in Gold Hill, Storey County, Nevada, legally described as Township 16 North, Range 21 East (T16N, R21E), Sections, 5, 6, 8, 9, and 16 (within), Mount Diablo Base and Meridian (Figure 1). The location of the Project Area for the Proposed Action, which encompasses approximately 88 acres of public and private lands, is depicted in Figure 2A of the FEA. Under the “Restoring Storey County” (see Section 5.2.1 of the FEA and Figure 20) public land ownership in the Project Area will decrease by 12 acres.

⁶ A Class 1 COT claim is non-discretionary. In 1953 the United States Congress amended the 1928 act which directed Class 1 COT claims to be mandatory.

Public Involvement

Public Scoping

On January 15, 2013, the BLM announced the schedule for the public scoping period and date of public workshops to the local and regional media. On January 17, 2013, the BLM initiated a 30-day scoping period, later extended for a total of 33 days due to a federal holiday, until February 19, 2013. The press release was published in the *Reno-Gazette Journal* (newspaper) on January 15, 2013, *KTNV Channel 2 News* (internet) on January 16, 2013, the *Elko Daily Free Press* (newspaper) on January 19, 2013, and the *Virginia City News* (newspaper) on January 25, 2013. A Project description, maps and information on how to comment was made available on the BLM's national ePlanning National Environmental Policy Act (NEPA) Register.

On January 15, 2013, the BLM notified 113 individuals, organizations and agencies on the Project mailing list of the scoping period. Notification was also provided to 34 Nevada State agencies through the Clearinghouse.

The BLM hosted two public scoping workshops, on January 22, 2013 at the BLM Carson City District Office in Carson City, and on January 29, 2013 at the Piper's Opera House in Virginia City. The BLM provided the public an overview of the Project, maps and other information on compliance with the NEPA and the NHPA. Approximately 75 people attended these two workshops.

The BLM conducted briefings on the Project on January 7, 2013 for the Lyon County Commissioners Meeting in Yerington, on January 15, 2013 for the Storey County Commissioners Meeting, and on January 17, 2013 for the Storey County Planning Commissioners Meeting in Virginia City.

The public scoping period closed on February 19, 2013. The BLM received 41 comment emails or letters on the Project for consideration. The BLM published a Scoping Report on March 28, 2013 and notified the 113 individuals, organizations and agencies on the Project mailing list of the documents availability.

Outreach Under the National Historic Preservation act (NHPA)

On February 8, 2013, the BLM provided early information to the Advisory Council on Historic Preservation (ACHP), and initiated consultation under the provisions of Section 106 of the NHPA for the Project's undertaking with the National Park Service (NPS), the Comstock Historic District Commission (CHDC), the Nevada State Historic Preservation Office (SHPO), Storey County Certified Local Government (County), the Yerington Paiute Tribe (YPT), and the Washoe Tribe of Nevada and California (WTNC). This consultation included the draft

determination of the Project's Area of Potential Effect (APE) under the NHPA, and an invitation to consult on the Project and comment on the APE. On January 13, 2014, the BLM sent revised APE maps and Project description to the SHPO, ACHP, WTNC, YPT, and an individual identified as a consulting party (Larry Wahrenbrock). This updated information was provided to NPS on May 9, 2014.

On May 9, 2014, the BLM sent correspondence to the NPS, YPT, WTNC and an individual identified as a consulting party (Larry Wahrenbrock) with information on the BLM's draft determinations of eligibility and effect for the Project and an invitation to comment. On June 4, 2014, BLM provided a field meeting and tour of portions of the Project area and cultural resources sites, as requested by the individual identified as a consulting party (Larry Wahrenbrock), in order to facilitate comments on the BLM's draft determinations of eligibility and effect. On June 10, 2014, the BLM sent correspondence to the SHPO providing the BLM's determinations of eligibility and effect, seeking concurrence on those determinations, and inviting the SHPO to consult to resolve adverse effects under the NHPA through a Memorandum of Agreement (MOA). On June 12, 2014, the BLM sent correspondence to the ACHP with the BLM's determination of adverse effect and an invitation to consult to resolve adverse effects through a MOA.

On August 14, 2014, the BLM sent correspondence to the Comstock Cemeteries Foundation, NPS, CHDC, County, YPT, WTNC, Comstock Mining, LLC, and an individual identified as a consulting party (Larry Wahrenbrock) to invite them to participate in the resolution of adverse effects through development of a MOA. The NPS, the YPT, and the WTNC did not choose to participate in the development of the MOA. The YPT and the WTNC did not identify any religious concerns regarding this Project. All the other listed parties did participate in the development of the MOA.

The BLM and consulting parties held meetings to develop the draft MOA on October 8, 2014, October 27, 2014, and on April 1, 2015. Consulting parties were provided to the opportunity to provide additional input on the draft MOA between April 13 and May 14, 2015, and between September 3 and October 27, 2015. The MOA was executed by the ACHP on February 17, 2016 (Attachment D of the FEA). Table 1 lists the consulting parties and whether they participated and/or signed the MOA.

Table 1 MOA Consulting Parties

Agencies, Tribes, and Individuals	Invited	Status	Signatories*
Advisory Council on Historic Preservation	√	Participated	√
Comstock Cemeteries Foundation	√	Participated	√
Comstock Historic District Commission	√	Participated	√
Comstock Mining, LLC	√	Participated	√
Larry Wahrenbrock	√	Participated	-

Agencies, Tribes, and Individuals	Invited	Status	Signatories*
National Park Service (Western Regional Office)	√	Did Not Participate	-
State Historic Preservation Officer	√	Participated	√
Storey County	√	Participated	-
Washoe Tribe of Nevada and California	√	Did Not Participate	-
Yerington Paiute Tribe	√	Did Not Participate	-

* Mandatory signatories for the MOA are the BLM, the SHPO, and the ACHP.

Public Review – Draft Environmental Assessment (DEA)

On November 7, 2014, the BLM announced the schedule for the public review of the DEA and public workshop. An article appeared in the *Nevada Appeal* (newspaper) on November 8, 2014. On November 10, 2014, the BLM made the DEA available for public review and comment for 30 days. On November 10, 2014, the BLM notified 76 individuals, organizations, and agencies on the Project mailing list of the DEAs availability. Notification was also provided to 34 Nevada State agencies through the Clearinghouse. The DEA, maps, and information on how to comment were made available on the BLM's national ePlanning NEPA Register.

The BLM hosted a public workshop on November 13, 2014 at the Piper's Opera House in Virginia City. The BLM provided the public an overview of the Project, maps, and other information on compliance with the NEPA and NHPA. Approximately 29 people attended this workshop. The BLM received 13 comment emails or letters for consideration. The 30-day public review and comment period for the DEA closed on December 9, 2014.

The BLM published all comment emails or letters (with redacted personal information), along with responses to 61 unique comments as four attachments when the Revised Draft Environmental Assessment (RDEA) was published (see below). The BLM made other minor clarifications or revisions to the DEA based on public comments received and incorporated those changes into the RDEA. No changes were made to the alternatives.

Public Review – Revised Draft Environmental Assessment (RDEA)

On September 21, 2015, the BLM announced the publication of the RDEA. The RDEA, maps, and information on how to comment was made available on the BLM's national ePlanning NEPA Register. Articles were published in *High Beam* (internet) on September 21, 2015, the *Northern Nevada Business on the Hour* (internet) on October 2, 2015, the *Nevada Appeal* (newspaper) on October 6, 2015, and in the *Virginia City News* (newspaper) on October 8, 2015. In addition to the news release, the BLM sent notification to 10 consulting parties and 34 Nevada State agencies through the Clearinghouse on September 21, 2015. Along with all comment emails or letters, and responses to 61 unique comments received during the public review and comment period for the DEA, the BLM also published the draft MOA requesting public input. The 30-day public review and comment period for the RDEA closed on October 20, 2015. The BLM received four comment emails or letters on the RDEA for consideration. The BLM did not

receive any comments on the draft MOA. The BLM has responded to 31 unique comments in Attachment E of the FEA.

Revisions Incorporated into the Final Environmental Assessment (FEA)

The BLM made minor clarifications or revisions to the RDEA based on public comments received and incorporated those revisions into the FEA. The BLM corrected the figures that showed the Non-Federal Alternative (e.g., Figure 11 of the FEA). All figures now consistently show that the Non-Federal Alternative would include the use of State Route 341/342 between the American Flat Road and Spring Valley by Comstock Mining, LLC for employee and utility traffic between their existing administrative office (on the American Flat Road) and the new proposed heap leach processing facility. Sections 2.2.2, 4.10.3, and 5.12.3 of the FEA were also clarified to include a description of the administrative traffic on State Route 341/342 between the American Flat Road and Spring Valley.

The BLM revised the calculations for emissions associated with administrative and haul traffic in Sections 4.1.1, 4.1.2, and 4.1.3. The BLM also provided the calculations for emissions from Comstock Mining, LLC's heap leach processing facility and open pit mining operation in Sections 5.3.1, 5.3.2, and 5.3.3. Figure 19 of the FEA was also revised as the previous versions showed the incorrect configuration of the Non-Federal Alternative heap leach processing facility.

The BLM revised the description of the Proposed Action to clarify that it analyzed a worst-case scenario by use of 60-ton haul trucks. Based on operational changes (surface to an underground mine) the BLM has also clarified that under the Proposed Action, Comstock Mining, LLC would change to 60-ton haul trucks with up to 100 round trips per day (a decrease from the No Action/Current Management Alternative of up to 118 round trips per day with 38-ton haul trucks). The BLM had previously stated that under the Proposed Action, haul truck traffic could increase from up to 118 round trips per day to up to 150 round trips per day. The BLM revised the description of the Proposed Action to clarify that it analyzed a worst-case scenario of up to 100 round trips per day.

The BLM has further clarified that under the Non-Federal Alternative, Comstock Mining, LLC would change from their current use of 38-ton haul trucks to 16.5-ton haul trucks (e.g., Section 2.2.2). The BLM had previously not specified the size of haul trucks that would be used under the Non-Federal Alternative.

Based on operational changes (surface to an underground mine), Comstock Mining, LLC has revised the extent of their requested ROWA Area from 100- to 200-feet wide for the American Flat Road, and 150-feet wide for the Lucerne Haul Road (Section 2.1). The reduced ROWA extent is located entirely within the Project Area and within the maximum extent of proposed

disturbance that was analyzed in this FEA and previous EA versions (Figure 2A). The ROWA Area is approximately 26 acres of public lands (Figure 2B of the FEA).

On July 13, 2016, the BLM completed the conveyance of “Lot 51” to Northern Comstock, LLC under the COT. The conveyance under the COT was for the surface rights to “Lot 51.” Approximately 860 feet of the American Flat Road and 1,485 feet of the Lucerne Haul Road are within “Lot 51.” As a result, the BLM prepared Figure 2B which shows the actual extent of the ROWA Area which excludes all private segments along the American Flat and Lucerne Haul roads. For detail on land tenure adjustments, see Section 5.2.1 of the FEA and Figure 20.

Land Use Conformance

The Project is in conformance with the Carson City Field Office Consolidated Resource Management Plan (CRMP) dated May 2001 and with the BLM’s mission statement regarding multiple use of the public lands. The CRMP provides management strategies for the protection of natural resources on public lands in Nevada and provides guidance on the decision-making process for Project conformance to the CRMP. The Project identified and developed construction and operation methods that conform to the measures outlined in the CRMP.

The CRMP reiterates selected provision of the 43 CFR 2800.0-2 - Rights-of-Way – Objectives.

“It is the objective of the Secretary of the Interior to grant rights-of-way and temporary use permits, covered by the regulations in this part, to any qualified individual, business entity, or governmental entity and regulate, control and direct the use of said rights-of way on public land so as to:

- A. Protect the natural resources associated with the public lands and adjacent private property or other lands administered by a government agency.
- B. Prevent unnecessary or undue environmental damage to the lands and resources.
- C. Promote the utilization of rights-of-way in common with respect to engineering and technological compatibility, national security and land use plans.
- D. Coordinate to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals, and appropriate quasi-public entities.”

The CRMP also specifies Standard Operating Procedures for granting ROWs. Applicable administrative actions include (LND-7):

“Exchanges and minor non-Bureau realty proposals will be considered where analysis indicates they are beneficial to the public.”

Authority

The authority to grant the Proposed Action is under the authority of Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) and the regulations at 43 CFR 2800.

Rationale

Proposed Action (Selected Alternative)

The Proposed Action addresses safety concerns regarding use of the American Flat Road by the public and mine-related traffic through modification of the road near the intersection with the Gold Hill (Masonic) Cemetery where a blind curve exists. Currently all northbound traffic on the American Flat Road must stop before proceeding because of the blind curve. The Proposed Action addresses safety concerns by separating public use from haul truck traffic through the construction of a new alignment of the American Flat Road and the designation of the Lucerne Haul Road for exclusive use purposes. The Proposed Action addresses a road previously used to access the former United Comstock Merger Mill in American Flat, which would be reclaimed. This road currently abuts the American Flat Road, and would also abut the proposed Lucerne Haul Road. Due to safety concerns (public traffic merging onto an exclusive use haul road near a curve), the road would be reclaimed and alternative access into American Flat would continue to be provided to the public (Figure 2A of the FEA). As described under Mitigation Measures, the BLM has resolved potential significant effects to historic properties in the Project Area that may occur as a result of the ROWA. Under the Proposed Action, the purpose and need would be met by allowing Comstock Mining, LLC to continue to haul across public land segments, although truck capacity would change from 38- to 60-ton haul trucks, and the number of round trips would decrease from up to 118 to up to 100 per day.

No Action/Current Management Alternative (Not Selected)

Under the No Action/Current Management Alternative, the BLM would have not approved Comstock Mining, LLC's request for a ROWA. Comstock Mining, LLC would continue to use the American Flat Road under the existing ROW (Figure 10 of the FEA); the terms of the ROW preclude Comstock Mining, LLC from making modifications to the road system. Under the No Action/Current Management Alternative, existing safety concerns regarding the mix of public use and haul truck traffic would not be addressed. The safety concerns near the intersection with the Gold Hill (Masonic) Cemetery would not be addressed. The BLM would have to seek alternative means to address the reclamation of a road that leads south to the former United Comstock Merger Mill in American Flat. The existing Comstock Mining, LLC ROW would

expire on December 31, 2017. Comstock Mining, LLC would have to seek alternate means to transport mined ore from the Lucerne Pit to a processing facility.

Non-Federal Alternative

The BLM evaluated a Non-Federal Alternative as proposed by Comstock Mining, LLC in their FPOD. Implementation of the Non-Federal Alternative is outside the BLM's decision-making authority and would only occur if the Proposed Action were not selected, or if the existing ROW expires on December 31, 2017. Without a means of access between the Lucerne Pit and the heap leach processing facility in American Flat, Comstock Mining, LLC would have to seek alternative means to continue to process their mined ore.

Comstock Mining, LLC has existing land in Spring Valley sufficient in size to accommodate a new heap leach processing facility. Implementation of the Non-Federal Alternative would cause greater impacts than the other alternatives evaluated by the BLM. Under the Non-Federal Alternative, 16.5-ton haul trucks would make up to 118 round trips each day on State Route 341/342 between the Lucerne Pit and the new heap leach processing facility in Spring Valley (Figure 11 of the FEA). Administrative traffic between the mine and heap leach processing facility would occur along State Route 342 through Silver City. Haul truck traffic from the Lucerne Pit along State Route 342 would cause disruption to Silver City residents. Haul and administrative traffic along the State Route 341/342 corridor through Silver City would increase overall traffic volume by approximately 10 percent. Construction of a new heap leach processing facility in Spring Valley would impact approximately 41 acres of vegetation and habitat for wildlife. Relocating existing heap leach processing facility equipment, or construction of a completely new facility would likely cause a disruption in tax revenues in the long-term to Storey County, and in the short-term from any reconfiguration or downsizing of the mining-related workforce.

Mitigation Measures

The following measures have been incorporated into the Proposed Action as Environmental Protection Measures and are included as stipulations to the ROWA grant:

Cultural Resources

The Project Area is within the Virginia City National Historic District and National Historic Landmark⁷. Within the Direct/Indirect Effects APE for the Proposed Action, 12 sites were determined eligible for the National Register of Historic Places (NRHP). Eight of the 12 NRHP-

⁷ The terms "National Historic District" and "National Register District" are interchangeable and refer to the same geographic location. These terms have also been combined into "National Register Historic District" which also refers to the same geographic location.

eligible sites (called “historic properties”) are located within or adjacent to the maximum disturbance area and have the potential to be adversely affected.

To resolve the potential adverse effects to the eight historic properties, the BLM has conducted extensive outreach with consulting parties (see Section 1.3 of the FEA). A MOA was prepared and made available for 30-days public review and comment between September 20, 2015 and October 21, 2015. The BLM did not receive any comments on the draft MOA. On February 17, 2016, the MOA was executed, thereby concluding the Section 106 process for the Proposed Action and the resolution of potential adverse effects to eight historic properties within the Project Area. Potential “significant” effects to historic properties have been resolved.

Air Quality

Dust control activities that would be applied to the Project are outlined in the Nevada Division of Environmental Protection-Bureau of Air Pollution Control Surface Area Disturbance Fugitive Dust Control Plan (Attachment A of the FEA). Road watering activities may include ripping the surface to a depth of two inches, blading the road smooth, and then applying water with a water truck for dust suppression.

Migratory Birds

A pre-disturbance nest survey would be conducted by a qualified biologist prior to initiating any surface disturbance associated with Project activities during the avian breeding season (March 1 through July 31 for raptors and May 15 through July 15 for other migratory birds). Pre-disturbance surveys for migratory birds are only valid for 14-days. If the disturbance for the specific location does not occur within 14-days of the survey another survey would be performed. If nests are located, or if other evidence of nesting (i.e., mated pairs, territorial defense, carrying nest material, transporting food) is observed, a protective buffer (the size depending on the habitat requirements of the species and the location of the nest) would be delineated after consultation with the BLM wildlife biologist and the buffer area avoided to prevent destruction or disturbance to nests or birds until they are no longer actively breeding or rearing young, or until the young have fledged. The site characteristics to be used to determine the size of the buffer area are as follows: a) topographic screening; b) distance from disturbance to nest; c) the size and quality of foraging habitat surrounding the nest; d) sensitivity of the species to nest disturbances; and e) the protection status of the species.

Noxious, Invasive Plant Species

Comstock Mining, LLC’s Integrated Weed Management Plan (IWMP) (Attachment B of the FEA) would be implemented throughout the Project Area. The IWMP includes strategies for prevention of noxious weed infestations, Best Management Practices, and setting priorities for treatments of existing infestations. For the application of approved herbicides on public lands,

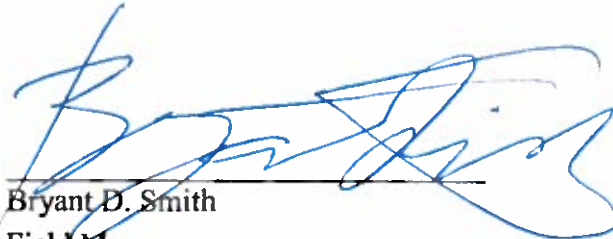
all treatments would be carried out in compliance with Informational Bulletin 2012-022 and the Carson City District IWMP.

Decision

The BLM has evaluated the Proposed Action (Selected Alternative) and two other alternatives in the *American Flat Road/Lucerne Access Right-of-Way Amendment Final Environmental Assessment* (DOI-BLM-NV-C020-2013-0005-EA), which is hereby incorporated by reference.

It is my Decision to issue a 30-year FLPMA ROWA to Comstock Mining, LLC to construct, maintain, and use the existing Lucerne Haul Road across public land segments and to designate it as an exclusive use road for public safety. It is my Decision to authorize modifications to the existing American Flat Road through segregation of haul traffic from public traffic for public safety, to authorize modifications to the American Flat Road near the intersection of the Gold Hill (Masonic) Cemetery for public safety, and the reclamation of an existing road to the former United Comstock Merger Mill in American Flat no longer in use. The ROWA will be subject to environmental protection measures described in Section 2.1.7 of the FEA. Use of this ROWA will be effective upon issuance by the BLM.

I have also determined that based on the analysis in the FEA, the Project would not cause significant effects, and I have also approved a Finding of No Significant Impact, which is hereby incorporated by reference.



Bryant D. Smith

Field Manager

Sierra Front Field Office

AUG 01 2016

Date

APPEAL PROCEDURES

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4. If you appeal, your appeal must also be filed with the Bureau of Land Management at the following address:

Bryant D. Smith
Field Manager
BLM, Sierra Front Field Office
5665 Morgan Mill Road
Carson City, NV 89701

Your appeal must be filed within thirty (30) days from receipt or issuance of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4942, January 19, 1993) for a stay (suspension) of the decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to:

Board of Land Appeals
Dockets Attorney
801 N. Quincy Street, Suite 300
Arlington, VA 22203

A copy must also be sent to the appropriate Office of the Solicitor at the same time the original documents are filed with the above office.

U.S. Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay is required to show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellants' success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.

4. Whether the public interest favors granting the stay.

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals. Electronically filed appeals will therefore not be accepted.